

1 THE COURT: I will begin by asking you some
2 questions. And then the lawyers will both have -- well, one
3 lawyer from each side will have an opportunity to ask you
4 questions as well.

5 If you have an affirmative answer to a question, please
6 raise your hand to let us know that you have an affirmative
7 answer. Then give us an opportunity to find your name on the
8 seating chart and to identify you by name before you give your
9 response. That way we will have a clear record about who is
10 talking at any given time.

11 Those members of the jury pool who are seated behind the
12 front bench don't need to raise their hands in response to any
13 question, but you do need to listen to all of the questions.
14 And if you are asked to replace another member of the jury
15 panel who is excused for cause, I will be asking you whether
16 you heard all of the questions and whether you had any
17 affirmative answers to any of those questions.

18 As you can see, I have a microphone, the lawyers have
19 microphones, when we have a witness on the witness stand, the
20 witness will have a microphone. You don't have microphones.

21 So it's important when you respond to a question that you
22 speak loudly and clearly and at a reasonable pace so that we
23 can hear you and we can make a good record.

24 It's also essential that we never have two people talking
25 at the same time. Our court reporter, Brenda Fauber, is an

1 excellent reporter, but even she can't make a clear record if
2 we have two people talking at once.

3 The lawyers have introduced themselves. And I will ask
4 if any of you are acquainted with counsel for the government,
5 and that was Keith Becker seated in the center of the table,
6 Michael Norris on his left, and Sarah Chang on his right. Are
7 any of you familiar with any of those lawyers?

8 The government in this case is represented by the office
9 of the United States Attorney. And Mr. Becker and Ms. Chang
10 are with the U.S. Department of Justice. Mr. Norris works
11 here locally with the United States Attorney, and her name is
12 Deborah Gilg.

13 Do any of you know Deborah Gilg or any other lawyer or
14 employee in the office of the United States Attorney?

15 Do any of you have any business with or have you had any
16 business with the office of the United States Attorney or the
17 Department of Justice?

18 The defendant in this case is Timothy DeFoggi, and he is
19 seated in the middle of the table here on my left [sic].
20 Mr. DeFoggi, would you stand so the members of the jury can
21 see you.

22 Is anyone here familiar with Mr. DeFoggi? All right.
23 Thank you, Mr. DeFoggi. You may be seated.

24 Mr. DeFoggi is represented by John Berry and Justin
25 Kalemkiarian of the office of Berry & Kelley in Lincoln,

1 Nebraska. Are any of you familiar with Mr. Berry,
2 Mr. Kalemkiarian, or any lawyers or employees of the Berry
3 Kelley Law Firm in Lincoln?

4 Have any of you had any business or do you currently have
5 any business with the Berry Kelley Law Firm?

6 Do any of you know or are any of you related to any
7 prospective juror on this panel?

8 I'm going to read a list of the witnesses whom the
9 plaintiff, the government, may call to testify. If you
10 believe that you know or may know one of these witnesses,
11 please raise your hand so we can inquire further.

12 Special Agent Jeffrey D. Tarpinian of the FBI in Omaha;
13 Special Agent Patricia J. Teakle of the FBI in Baltimore;
14 Special Agent Jacqueline Dougher of the FBI, Baltimore;
15 Special Agent Elizabeth A. Weiland of the FBI headquarters;
16 Ray C. Hsu, H-s-u, forensic examiner; Special Agent Steven A.
17 Smith Jr., FBI headquarters; Special Agent P. Michael Gordon,
18 FBI headquarters; Robert Webber, Omaha, FBI; Matthew R. Grant,
19 Omaha FBI computer scientist; Kevin Smith, Baltimore County
20 Police Department; Sergeant Dennis Cary, Washoe County
21 Sheriff's Office; Jimmy Dale Bounds, Germantown, Maryland;
22 Christopher Lee Casto, Germantown, Maryland; Special Agent
23 Alex Hernandez, Health & Human Services; Paval Stevashain;
24 Vicki L. Jarchow, court reporter; Dean Clarke.

25 In addition to the witnesses whose names I've read, the

1 defendant may call the following individuals: Dan Bright,
2 Chris Casto, Dale Bounds, Marianne DeFoggi, Dan Meineke. All
3 right. I saw no hands raised.

4 As stated in the indictment, this case is entitled United
5 States of America, plaintiff, versus Timothy DeFoggi,
6 defendant.

7 An indictment is a formal document that states the
8 charges against a defendant and informs the defendant of the
9 charges against him.

10 An indictment is not evidence against a defendant. The
11 defendant entered a plea of not guilty to the charges in the
12 indictment. Therefore, the defendant is presumed to be
13 innocent of the offenses charged.

14 The following is a summary of the charges in the
15 indictment.

16 Count I of the indictment alleges that between on or
17 about March 2, 2012, and on or about December 8, 2012, in the
18 District of Nebraska and elsewhere, Timothy DeFoggi and others
19 knowingly engaged in a child exploitation enterprise. Count
20 II of the indictment alleges that between on or about March 2,
21 2012, and on or about December 8, 2012, in the District of
22 Nebraska and elsewhere, Timothy DeFoggi knowingly conspired to
23 advertise child pornography. Count III of the indictment
24 alleges that between on or about March 2, 2012, and on or
25 about December 8, 2012, in the District of Nebraska and

1 elsewhere, Timothy DeFoggi and others knowingly conspired to
2 distribute child pornography.

3 Counts IV through VII of the indictment allege that on or
4 about November 21, 2012; November 26, 2012; December 4, 2012;
5 and December 8, 2012, in the District of Nebraska and
6 elsewhere, Timothy DeFoggi knowingly accessed any means or
7 facility of interstate commerce to view child pornography.

8 I've briefly described the nature of the case. This
9 particular case involves child pornography.

10 Please remember these questions are not intended to
11 embarrass you or to pry into your personal affairs. If for
12 any reason it would cause you embarrassment to answer a
13 question in front of the other members of the jury panel, we
14 will hold a sidebar conference. I'll meet with you here on
15 the right-hand side of the bench. Ms. Fauber will join us and
16 one or more of the lawyers from both sides will join us.
17 Ms. Gomez will turn on some white noise, and we'll talk as
18 privately as we can over on that side of the bench.

19 Have any of you or members of your family or close
20 friends ever been involved in an arrest or prosecution related
21 to child pornography?

22 Have any of you or members of your family or close
23 friends ever been involved in an arrest or prosecution related
24 to child sex abuse?

25 PROSPECTIVE JUROR SCANLAN: Excuse me, your Honor?

1 THE COURT: Let me get your name first. Hold on a
2 moment. Mr. Scanlan?

3 PROSPECTIVE JUROR SCANLAN: My great-niece was
4 abducted, raped and murdered in February.

5 THE COURT: Did that take place here in Nebraska?

6 PROSPECTIVE JUROR SCANLAN: No, St. Joseph, Missouri
7 -- excuse me, Springfield, Missouri.

8 THE COURT: And how long ago did that incident take
9 place?

10 PROSPECTIVE JUROR SCANLAN: February of this year.

11 THE COURT: Has the individual responsible for this
12 been arrested?

13 PROSPECTIVE JUROR SCANLAN: Yes.

14 THE COURT: Are charges still pending?

15 PROSPECTIVE JUROR SCANLAN: Yes, as far as I know.

16 THE COURT: Well, this case involves child
17 pornography and related accusations.

18 And I often tell people when we're in a trial involving
19 any allegation of criminal activity, it's not necessary that
20 you keep an open mind about whether criminal activity is a
21 good thing or a bad thing. The issue is going to be whether
22 the government can prove beyond a reasonable doubt each and
23 every element of each charge.

24 So for example, when we have a drug case, sometimes I
25 hear members of the jury panel say, "Well, I'm not sure I can

1 be objective because I think drugs are a bad thing," or "I
2 have a child who was addicted to drugs, and it destroyed my
3 child's life."

4 And I tell them that it's okay if you think drugs are a
5 bad thing, illegal drugs. Congress already made that decision
6 that drugs are a bad thing. The question is whether the
7 government has proved each element of each offense beyond a
8 reasonable doubt.

9 So -- and we'll get to your very personal and very tragic
10 issue in a moment. If some of you are thinking, wow, I don't
11 like child pornography, it's a bad thing, it's a horrible
12 thing; that does not disqualify you from serving on a jury.

13 What we want to know is whether or not you can be fair
14 and objective in holding the government to its burden of
15 proof. And if the government meets its burden of proof
16 showing each element beyond a reasonable doubt, then you would
17 find the defendant guilty. If you find the government did not
18 meet its burden of proof with respect to each element, then
19 you would find the defendant not guilty.

20 So we're inquiring about any issues that might cause any
21 of you to be unable or unwilling to do your job as a juror in
22 viewing the evidence and applying the law as I give it to you
23 to the evidence.

24 So that brings me back to you, Mr. Scanlan, with this
25 tragedy in your family, and I don't know how close you were to

1 the niece or how close -- the great-niece, how close you were
2 to the parents. But this is a personal tragedy that you and
3 your family suffered.

4 Do you believe that you could listen to the evidence in
5 this case which deals with child pornography and base your
6 decision as a juror on the evidence in the case and the law as
7 I give it to you?

8 PROSPECTIVE JUROR SCANLAN: Yes, I can.

9 THE COURT: Thank you, sir.

10 Is there anyone else here who has a personal experience
11 with -- either your own experience or an experience of a close
12 family member or close friend involving child sex abuse?

13 I'll broaden it a little farther into physical child
14 abuse. All right.

15 How many of you work with minor children? I'll start in
16 the back row.

17 Ms. Svehla, I see you are a teacher -- or you were a
18 teacher. And what grade or grades did you teach?

19 PROSPECTIVE JUROR SVEHLA: I did elementary school
20 and I sub on occasion now.

21 THE COURT: Okay. And do you believe that although
22 you have devoted your career to working directly with children
23 of a young age, that you could be fair and impartial as a
24 juror and make your decision based on the evidence in this
25 case and the law as I give it to you?

1 PROSPECTIVE JUROR SVEHLA: Yes.

2 THE COURT: Thank you, ma'am.

3 Any more hands in that back row?

4 All right. Front row within the box, anybody work with
5 children?

6 I'll move to in front of the box now. I didn't see any
7 hands within the box.

8 Ms. Beck, I see you're a registered nurse; is that right?

9 PROSPECTIVE JUROR BECK: Uh-huh.

10 THE COURT: Do you work exclusively with children or
11 with all --

12 PROSPECTIVE JUROR BECK: Not exclusively with
13 children, no; all age ranges.

14 THE COURT: All right. But as a nurse, from time to
15 time you deal with children.

16 PROSPECTIVE JUROR BECK: Correct.

17 THE COURT: And has your work caused you to be in
18 contact with any children who have been victims of sex abuse?

19 PROSPECTIVE JUROR BECK: In the past, yes.

20 THE COURT: Okay. Do you believe that that
21 experience would in any way prevent you from being a fair and
22 impartial juror and basing your decision on the evidence in
23 this case and the law as I give it to you?

24 PROSPECTIVE JUROR BECK: No, I don't think so.

25 THE COURT: Thank you, ma'am.

1 Any more hands in front of the box?

2 Yes, Ms. Hardesty?

3 PROSPECTIVE JUROR HARDESTY: Yes.

4 THE COURT: Go ahead.

5 PROSPECTIVE JUROR HARDESTY: I'm the director of the
6 UNMC Youth Learning Center. And I also taught classes for the
7 National Safety Council for teenagers. And I was a leader for
8 Camp Fire Kids.

9 THE COURT: Okay. And in those capacities, did you
10 on occasion come across children who had been abused or
11 exploited?

12 PROSPECTIVE JUROR HARDESTY: No.

13 THE COURT: Is there anything about your background
14 in working with youth that you think would prevent you from
15 being a fair and impartial juror?

16 PROSPECTIVE JUROR HARDESTY: No, Judge.

17 THE COURT: Thank you, ma'am.

18 Any more hands in the front row?

19 I'm going to move to the bench, I saw a few hands there.
20 And Mr. Furcini? No, I've got it wrong then, I'm sorry.
21 Ms. Forman?

22 PROSPECTIVE JUROR FORMAN: I'm a pediatric nurse. I
23 worked at Children's Hospital the last 16 years under their
24 umbrella, so I have come across occasional cases in the past
25 and have gone to conferences when we screen for potential

1 child abuse.

2 THE COURT: Okay. And do you believe that your
3 employment and your history of working with children,
4 including those who may have been victims of abuse, would in
5 any way prevent you from listening to the evidence and
6 weighing the evidence and applying the law as I give it to you
7 to that evidence, reaching a fair and impartial decision?

8 PROSPECTIVE JUROR PUGH: I honestly -- I don't know,
9 to be quite honest. My judgment's been a little bit off. I
10 think I spoke with you about a recent death in my family, so
11 I'm not as clear on what I believe in anymore. My father
12 passed away a couple months ago.

13 THE COURT: And I will share that with the lawyers
14 here so that they're aware of what you told me.

15 And Ms. Forman mentioned to me downstairs that she has
16 suffered the loss of her father a few months ago and the loss
17 of another close friend, so she did express some concerns
18 about her -- perhaps her ability to concentrate during the
19 trial. Is that fair to say, Ms. Forman?

20 PROSPECTIVE JUROR FORMAN: Yeah. I'm doing some
21 grief counseling right now.

22 THE COURT: All right. Is there any request by the
23 lawyers that I excuse Ms. Forman and bring up another member
24 of the jury panel to take her place?

25 Well, there's no request --

1 MR. BERRY: Your Honor, I'm sorry. I was waiting for
2 the prosecution. The defense does request that, your Honor.

3 THE COURT: All right. I'm going to have you take a
4 seat behind the front bench, Ms. Forman. And I'm going to ask
5 Ms. Gomez to choose another name, an individual who will take
6 your place.

7 COURTROOM DEPUTY: Greg C. Pugh.

8 THE COURT: Mr. Pugh, you've been here in the court
9 this morning as we've been proceeding with voir dire; is that
10 correct?

11 PROSPECTIVE JUROR PUGH: Yes.

12 THE COURT: Did you listen to all the questions?

13 PROSPECTIVE JUROR PUGH: Yes, your Honor.

14 THE COURT: Did you have any affirmative answers to
15 any of those questions?

16 PROSPECTIVE JUROR PUGH: No.

17 THE COURT: Very good.

18 I saw a hand here to my left. And I believe, Mr. Brown,
19 you wished to be heard?

20 PROSPECTIVE JUROR BROWN: I believe that anybody that
21 has anything to do with, like, child pornography, caught with
22 anything like that, I believe you're guilty. I think it's a
23 waste of taxpayers' time and money to sit here and view
24 evidence and all that other kind of stuff.

25 THE COURT: And Mr. Brown, you also indicated to me

1 downstairs that you had some concerns about your ability to --

2 PROSPECTIVE JUROR BROWN: Yes, I --

3 THE COURT: You said you might have some -- a
4 disability that would prevent you from being able to digest
5 the evidence in the case; is that correct?

6 PROSPECTIVE JUROR BROWN: Correct.

7 THE COURT: All right. Would you like me to share
8 that with the lawyers or would you prefer I not?

9 PROSPECTIVE JUROR BROWN: Sure.

10 THE COURT: Okay. Mr. Brown indicates that he has a
11 reading disability and he would not likely be able to read
12 materials if there are written materials that are presented in
13 connection with the evidence.

14 Is there a request that Mr. Brown be excused and that
15 someone else take his place?

16 MR. NORRIS: Your Honor, we don't object to such a
17 request. We're fine with him being excused.

18 THE COURT: Any objection to me excusing him?

19 MR. BERRY: No, your Honor.

20 THE COURT: All right. Mr. Brown, I'm going to go
21 ahead and ask you to take a seat. And Ms. Gomez will draw
22 another name.

23 COURTROOM DEPUTY: Tasha M. Helms.

24 THE COURT: Ms. Helms, you were here through the voir
25 dire process in the courtroom so far?

1 PROSPECTIVE JUROR HELMS: Yes, your Honor.

2 THE COURT: And did you hear all the questions?

3 PROSPECTIVE JUROR HELMS: Yes, your Honor.

4 THE COURT: Did you have any affirmative answers to
5 any questions?

6 PROSPECTIVE JUROR HELMS: No, your Honor.

7 THE COURT: Very good. We'll proceed.

8 Well, this may overlap a little bit with the questions I
9 was asking you earlier, but have any of you or any members of
10 your family or close friends ever been accused of sex abuse or
11 other abuse of a minor?

12 COURTROOM DEPUTY: Judge, there's another person that
13 answered yes to your question about working with children.

14 THE COURT: I'm sorry, I didn't follow through on all
15 the people who were working with children.

16 We're going back to the front bench. And Mr. Reiff, do
17 you also have a background working with children?

18 PROSPECTIVE JUROR REIFF: Not in my day job, but I am
19 a Cubmaster for Scouts and a Scoutmaster for Scouts.

20 THE COURT: Very good. Do you have any reason to
21 believe that your work with boys would in any way prevent you
22 from being a fair and impartial juror in this case?

23 PROSPECTIVE JUROR REIFF: No.

24 THE COURT: Thank you, sir.

25 Any other hands that I missed?

1 All right. We'll proceed. And I did not see any hands
2 in response to the question about whether any of you or
3 members of your family or close friends had been accused of
4 sexual abuse of a minor. If there were any hands, please
5 raise them.

6 Do any of you believe that the criminal laws in this
7 country, whether they're federal laws or state laws, relating
8 to child pornography are either too harsh or too lenient?

9 Have any of you had special training in law, criminal
10 justice, or law enforcement?

11 Have any of you had special training in computers,
12 Internet, chat rooms, file sharing -- that's fine, I'm asking
13 a broad question about computer-savvy people here in the
14 courtroom.

15 And I'm going to start with Mr. Boldt. And would you
16 tell us your training and expertise, please.

17 PROSPECTIVE JUROR BOLDT: I am a network specialist
18 at the Fremont Area Medical Center, Fremont Health. So I've
19 worked in the computer technology side of things in the health
20 industry for the last 14 years.

21 THE COURT: Very good. Thank you, sir. The lawyers
22 may have more questions for you -- for all of you who have
23 computer expertise, but I'm just going to try to point you out
24 and ask you some basic questions.

25 Anybody else in that back row?

1 Okay. I'll move to the front row within the box.

2 Ms. Ladd, I believe you have expertise. Would you tell us
3 what that is.

4 PROSPECTIVE JUROR LADD: Over nine years as a
5 programmer and SQL to database and programming.

6 THE COURT: Excellent. Thank you.

7 Anyone else within the box? I'll move to the row in
8 front of the box, anyone there with computer expertise,
9 special training?

10 And now to the bench? Several people.

11 Mr. Reiff, would you tell us your background.

12 PROSPECTIVE JUROR REIFF: With the company I'm with
13 the last couple -- I guess it's more on-the-job training. I
14 take care of the IT network, printers, anything to do with the
15 computers for the last 20 years.

16 THE COURT: Very good. Thank you.

17 I saw Mr. Furcini.

18 PROSPECTIVE JUROR FURCINI: I have a bachelor's
19 degree in computer science software engineering.

20 THE COURT: Very good. Thank you, sir.

21 Any more hands in the front bench? Mr. Pugh?

22 PROSPECTIVE JUROR PUGH: Networking, Internet
23 management; I have a 3D printing company, so just a lot of
24 computers in general.

25 THE COURT: Thank you, sir.

1 All of those who answered that question talked about
2 special training they had or special expertise they had
3 related to their work. Does anyone else here engage in
4 chats -- Internet chats on chat rooms or file-sharing
5 activities?

6 Again, Mr. Pugh? Is this -- this just recreational; is
7 that right?

8 PROSPECTIVE JUROR PUGH: Just blogging, and other
9 social media websites.

10 THE COURT: Okay. Very good. Anyone else?

11 Yes, Ms. Ladd again.

12 PROSPECTIVE JUROR LADD: Just general, socializing,
13 asking questions on blogs and everything, along with the
14 typical stuff.

15 THE COURT: Thank you, ma'am.

16 Yes, and Ms. Hardesty?

17 PROSPECTIVE JUROR HARDESTY: I'm not sure, but is
18 Pinterest something you're interested in?

19 THE COURT: Well, the lawyers may be interested in
20 it, so you --

21 PROSPECTIVE JUROR HARDESTY: Okay. Pinterest.

22 THE COURT: You engage in the Pinterest website.
23 Okay.

24 Yes, sir, Mr. Scanlan?

25 PROSPECTIVE JUROR SCANLAN: I use Citrix at my

1 employment.

2 THE COURT: Very good. Anyone else?

3 This is a criminal case. Certain principles of law apply
4 in every criminal trial. I will state some of those
5 principles and ask that if you disagree with the stated
6 principle, raise your hand to show that you do not or cannot
7 accept that principle.

8 In a prosecution of a criminal charge against a
9 defendant, the defendant is presumed innocent.

10 The government has the burden of proof which means that
11 the government must prove beyond a reasonable doubt each
12 element of the crime charged against the defendant.

13 In a criminal case, the defendant is not required to
14 prove his innocence. A criminal case is different from a
15 civil case. In a civil case, a plaintiff has to prove its
16 case by a preponderance or greater weight of the evidence. In
17 a criminal case, the government must prove its case and the
18 charge against the defendant beyond a reasonable doubt.

19 As a juror, you must wait until all of the evidence has
20 been presented and you have been instructed on the law which
21 is to be applied before you make up your mind concerning any
22 fact or issue in this case.

23 As a juror, you must render a verdict solely on the
24 evidence introduced at trial, apply the law stated in the
25 instructions that will be given to you, and disregard any

1 other ideas, notions, or beliefs about the law that you may
2 have previously held, heard about, or encountered.

3 Is there anyone here who cannot accept all those basic
4 principles?

5 Have any of you had an experience with the court system,
6 either as a plaintiff, a defendant, or a witness, that you
7 believe would affect your ability to be fair and impartial in
8 this case?

9 How many of you have served on juries before today? Very
10 good. I don't see any hands within the box, so I'm going to
11 start with Mr. Scanlan. How long ago were you on a jury?

12 PROSPECTIVE JUROR SCANLAN: That I can recall, at
13 least eight years ago, maybe longer.

14 THE COURT: Was it a civil case or a criminal case?

15 PROSPECTIVE JUROR SCANLAN: Criminal case.

16 THE COURT: Did the jury reach a verdict?

17 PROSPECTIVE JUROR SCANLAN: Yes.

18 THE COURT: Very good.

19 Any more hands here on my left?

20 Yes, Ms. Beck?

21 PROSPECTIVE JUROR BECK: I served on a criminal case,
22 approximately 20 years ago. And it was a -- the case involved
23 armed robbery.

24 THE COURT: And did the jury reach a verdict?

25 PROSPECTIVE JUROR BECK: The jury did reach a

1 verdict, yeah.

2 THE COURT: Very good. Any more hands on my left?

3 I'll move to the front bench. I saw some hands over
4 there.

5 Yes, Mr. Hansen?

6 PROSPECTIVE JUROR HANSEN: Yes. It was probably a
7 little over ten years ago. It was a criminal trial, and he
8 was found guilty.

9 THE COURT: Thank you, sir.

10 Any more hands in that front bench?

11 Mr. Ellenberger?

12 PROSPECTIVE JUROR ELLENBERGER: I served on a
13 criminal case about, oh, 20 years ago. It was a child
14 molestation case.

15 THE COURT: Did the jury reach a verdict?

16 PROSPECTIVE JUROR ELLENBERGER: Yes, they did.

17 THE COURT: All right.

18 Any other hands there in the front row?

19 Mr. DeMayo?

20 PROSPECTIVE JUROR DeMAYO: Yeah, I served on a
21 criminal case about 20 years ago.

22 THE COURT: Okay. Did the jury reach a verdict?

23 PROSPECTIVE JUROR DeMAYO: Yes.

24 THE COURT: Very good. Any hands I missed?

25 Has anyone here seen, read, or heard anything from any

1 source, including the news media, about this case?

2 Has anyone already made up his or her mind about how this
3 case ought to be decided?

4 Has anyone here been a victim of a crime or had a family
5 member who was a victim of a crime and who believes that that
6 experience might affect your ability to be fair and impartial
7 in this case?

8 As I mentioned, the plaintiff in this case is the United
9 States of America. Is there anyone who has specific feelings
10 about the government, either so positive or so negative, that
11 you believe it would affect your impartiality in this case?

12 How many of you have backgrounds in law enforcement or
13 have close friends or relatives who have worked in law
14 enforcement?

15 Ms. Demers?

16 PROSPECTIVE JUROR DEMERS: My cousin's husband is a
17 U.S. Marshal. He lives next door to my parents.

18 THE COURT: Very good. Thank you.

19 Yes, Ms. Svehla?

20 PROSPECTIVE JUROR SVEHLA: My family knows the family
21 of the police chief here in Omaha.

22 THE COURT: Very good.

23 Anyone else in the back row?

24 Front row within the box?

25 And in front of the box? Mr. Matthews-Saunders?

1 PROSPECTIVE JUROR MATTHEWS-SAUNDERS: Yes. My uncle
2 is on the Omaha Police Department. I also have a roommate who
3 is completing training for the Omaha Police Department.

4 THE COURT: Very good. Thank you, sir.

5 Ms. Beck?

6 PROSPECTIVE JUROR BECK: I have a cousin who is on
7 the police department in Lexington, Nebraska.

8 THE COURT: Okay.

9 Ms. Hardesty?

10 PROSPECTIVE JUROR HARDESTY: I worked with police
11 officers in the emergency room and at the National Safety
12 Council.

13 THE COURT: Very good. Thank you, ma'am.

14 Mr. Scanlan?

15 PROSPECTIVE JUROR SCANLAN: My cousin is a sheriff in
16 Story County, Iowa.

17 THE COURT: Thank you, sir.

18 Mr. Lausterer?

19 PROSPECTIVE JUROR LAUSTERER: My cousin works for
20 dispatch in Wayne, Michigan.

21 THE COURT: Very good. Any hands in the bench?

22 Mr. Hansen?

23 PROSPECTIVE JUROR HANSEN: My son is a deputy
24 sheriff, Dakota County, Nebraska.

25 THE COURT: Very good.

1 Mr. Bradley, you raised your hand.

2 PROSPECTIVE JUROR BRADLEY: I work in the Department
3 of Corrections, different levels in the department. And my
4 brother is also chief of police in Denison.

5 THE COURT: Very good. Thank you, sir.

6 Mr. Furcini?

7 PROSPECTIVE JUROR FURCINI: My father is a policeman,
8 retired about ten years ago.

9 THE COURT: Thank you.

10 Any more hands in that front bench?

11 Is there anyone here who would give more weight or less
12 weight to the testimony of a witness simply because that
13 witness is or had been a law enforcement officer?

14 At this juncture, the lawyers have an opportunity to ask
15 you more questions. And they may be following up on some of
16 the questions that I asked you earlier.

17 We will begin this process with the government.

18 Mr. Norris, will you voir dire?

19 MR. NORRIS: Yes, your Honor.

20 THE COURT: You may proceed.

21 MR. NORRIS: May it please the Court, counsel. I'm
22 Michael Norris. I'm an Assistant United States Attorney here
23 in the District of Nebraska. And as the Court has indicated,
24 both Mr. Becker and Ms. Chang are with the Department of
25 Justice.

1 There are two witness that were neglected from that long
2 list of witnesses that the Court went over. And I'll tell you
3 now that that's a list of names that may be called, that are
4 likely to be called; but in all likelihood, there will be
5 about six, maybe seven witnesses, that the government intends
6 to actually call in this case.

7 But two that were not on that list was an individual by
8 the name of Charles MacMillan who lives in the Washington,
9 D.C. area. And another individual by the name of Michael
10 Mizer who is an FBI agent in that Baltimore and Washington,
11 D.C. area like many of the others you heard of.

12 I think I know the answer, but does anybody know either
13 of those people?

14 This case centers on a large child pornography website
15 that was hosted here in the Omaha area. And by hosted, it
16 means that all the communications came in and went through
17 that particular website. And the server for that particular
18 website was located in Bellevue, Nebraska; and the
19 administrator was in Omaha, Nebraska. So you're going to hear
20 some testimony about that.

21 I ask you now because you were asked if anybody knew
22 anything about this case, and yet you didn't have that
23 information with you at that particular time.

24 Has anybody heard anything about this case or some of the
25 cases that may have preceded this particular case? Doesn't

1 ring a bell for anybody? All right. Good.

2 As a part of this trial, I suspect that you are going to
3 hear testimony that the FBI took over that website -- that
4 particular website that was hosting and trading and
5 advertising child pornography, and they ran it. They ran it
6 for about a three-week period under close monitoring, under
7 close scrutiny, with approvals of their headquarters, DOJ
8 headquarters, and court authorization.

9 Again, I ask you this because does that -- has anybody
10 heard anything about this, either in the news or on any other
11 type of media?

12 All right. Has anyone -- is it Mr. Pugh? You read
13 *Reddit*, correct?

14 PROSPECTIVE JUROR PUGH: Yes.

15 MR. NORRIS: Do you read anything else other than
16 *Reddit*, something like *Wired* magazine, anything like that?

17 PROSPECTIVE JUROR PUGH: Yeah.

18 MR. NORRIS: And have you, in your reading those
19 magazines, come across any situations like this or discussions
20 like this, that you recall?

21 PROSPECTIVE JUROR PUGH: People talk about it,
22 there's chatter about child pornography.

23 MR. NORRIS: Okay, child pornography in general. I'm
24 talking about something specific and case related, not just in
25 general.

1 PROSPECTIVE JUROR PUGH: No.

2 MR. NORRIS: Thank you.

3 Can you explain perhaps what *Wired* is for those of us
4 that either don't read *Wired* or may not be aware of what *Wired*
5 is?

6 PROSPECTIVE JUROR PUGH: It's just a tech magazine
7 that brings in news articles from all over the world. It's
8 kind of like --

9 MR. NORRIS: Mostly technology related?

10 PROSPECTIVE JUROR PUGH: Yeah, for *Wired*.

11 MR. NORRIS: Thank you.

12 Does anybody here subscribe to any magazines that are
13 similar to that? And that's why I asked you to talk about
14 that, any IT-type magazines or websites such as *Reddit* or
15 *Wired* magazine or anything like that. Anybody -- especially
16 some of you individuals who have a little bit more knowledge
17 about computers and software networks, etc., do any of you
18 subscribe to any of those? All right.

19 I've told you that during the course of the trial there
20 will be testimony that the FBI took over a child porn website;
21 that they carefully monitored that website for a short period
22 of time; and during the short period of time, the reason they
23 did that was to identify those people who were advertising,
24 trading, and distributing child pornography on that particular
25 website.

1 I ask you, is there anything about the FBI getting
2 involved in such a fashion and doing this that bothers
3 anybody? Is this a tactic that there's anybody that has a
4 problem with that or just outright disapproves of it?

5 PROSPECTIVE JUROR PUGH: I don't outright disapprove
6 of it; but depending on how it's done, I don't believe the
7 neutrality...

8 MR. NORRIS: If it's done with a court order and a
9 court authorization?

10 PROSPECTIVE JUROR PUGH: Depends on how they got the
11 information to get that court order.

12 MR. NORRIS: Okay. So it relates to -- you'd want to
13 know more information before you would be able to determine
14 whether or not you would have a problem with it?

15 PROSPECTIVE JUROR PUGH: Yeah.

16 MR. NORRIS: If you did have a problem with it, would
17 that problem be curable by an instruction by the judge or by
18 the Court saying that if the law was followed -- and the law
19 was followed -- that you must accept the evidence for what it
20 is and not question how it was obtained, etc.?

21 PROSPECTIVE JUROR PUGH: I agree if it's used right.

22 MR. NORRIS: All right. Thank you.

23 Anybody else have any problem with such a tactic, a
24 tactic that is undertaken in order to find people who are
25 trading, soliciting, advertising child pornography?

1 Is there anybody here who thinks that the FBI -- it
2 doesn't have to be the FBI, it could be any law enforcement
3 agency, so we'll just say police in general. Is there anybody
4 here who believes that the police should not devote time or
5 resources investigating child pornography or online type
6 services, sexual exploitation services?

7 You will learn -- those of you who are selected to the
8 jury are going to learn that the name of the website was
9 called PedoBook. So does that ring any bells? Has anybody
10 heard any reference to a site called PedoBook, either by
11 reading it in the paper or learning about it through some
12 other means?

13 All right. Is there anybody here who has not heard the
14 term pedophile or pedophilia? Anybody who's never heard that?
15 I'm not going to ask you to define it, I'm just going to ask
16 is there anybody here who is not familiar with the term or has
17 never heard the term before?

18 Mr. Pugh, you've indicated that you operate a blog. And
19 I'm not picking on you, you're just the one that has more
20 information than anybody else with regard to being a little
21 bit more technically savvy. Do you run a website?

22 PROSPECTIVE JUROR PUGH: Yes.

23 MR. NORRIS: Okay. What type of website do you run?
24 Is that part of the blog?

25 PROSPECTIVE JUROR PUGH: It's not -- it's not

1 necessarily a blog, it's just a service website.

2 MR. NORRIS: What's the nature of the website, if you
3 don't mind me asking?

4 PROSPECTIVE JUROR PUGH: We do custom ceramic objects
5 for 3D printing.

6 MR. NORRIS: Okay. So for your work, correct?

7 PROSPECTIVE JUROR PUGH: Uh-huh.

8 MR. NORRIS: And that's fairly common, correct?

9 PROSPECTIVE JUROR PUGH: Uh-huh.

10 MR. NORRIS: I'd like to ask, does anybody else run a
11 website, either through your work -- Mr. Reiff? You're an IT
12 specialist as well.

13 PROSPECTIVE JUROR REIFF: One hat, yes.

14 MR. NORRIS: On one hat. That hat that you wear, is
15 that related to your business, and is there a website that
16 runs through the business?

17 PROSPECTIVE JUROR REIFF: Yeah, construction work.
18 And I mostly make the pages. I should say I coordinate with
19 who we pay to host it. I design the pages and maintain it.

20 MR. NORRIS: Thank you.

21 Anybody else? Ma'am, let me make sure I get your name
22 right for the court reporter. It's Ms. Ladd, isn't it?

23 PROSPECTIVE JUROR LADD: For my work, I program
24 internal websites and external websites. I help with that.
25 And we host it locally within the building.

1 MR. NORRIS: Is it open to the outside? When you say
2 internal websites, I take it it's accessible --

3 PROSPECTIVE JUROR LADD: Internally. We have
4 internet and intranet. And we have external --

5 MR. NORRIS: We call it internet and extranet, that
6 extranet goes outside.

7 PROSPECTIVE JUROR LADD: Uh-huh.

8 MR. NORRIS: Anybody else here who is familiar with
9 websites?

10 You are Mr. Boldt, correct?

11 PROSPECTIVE JUROR BOLDT: Correct. My previous job I
12 used to maintain our internal web page as well as the external
13 website.

14 MR. NORRIS: Along the same things that we've just
15 heard about?

16 PROSPECTIVE JUROR BOLDT: Yes.

17 MR. NORRIS: Are you Ms. Harrison?

18 PROSPECTIVE JUROR HARRISON: Yes.

19 MR. NORRIS: Ms. Harrison, what have you done in that
20 regard?

21 PROSPECTIVE JUROR HARRISON: I worked in advertising
22 and I maintain websites for my clients.

23 MR. NORRIS: Okay. Multiple websites then?

24 PROSPECTIVE JUROR HARRISON: Uh-huh.

25 MR. NORRIS: Did you create the website or is it

1 something that you update --

2 PROSPECTIVE JUROR HARRISON: No.

3 MR. NORRIS: -- and modify as the client wishes?

4 PROSPECTIVE JUROR HARRISON: Yes, I update it.

5 MR. NORRIS: Thank you.

6 Anybody run their own personal website, other than
7 Mr. Pugh, we've already talked about -- actually you haven't
8 said you run it.

9 PROSPECTIVE JUROR PUGH: I do, but...

10 MR. NORRIS: That's fine. I'll leave you alone.

11 You are Ms. Hardesty?

12 PROSPECTIVE JUROR HARDESTY: Yes. I just determine
13 what goes on my website, but I don't see the computer work.

14 MR. NORRIS: So you have input.

15 PROSPECTIVE JUROR HARDESTY: Uh-huh.

16 MR. NORRIS: All right. Thank you.

17 Now, I talked a little bit -- this site that you're going
18 to hear about, it was called PedoBook. It was here in
19 Nebraska. It was the hub of communications for people or
20 members who were all throughout the United States, as a matter
21 of fact, all over the world. But every communication has to
22 come in through Nebraska and go elsewhere.

23 You're going to learn through the course of this trial
24 that the defendant is a resident of Germantown, Maryland,
25 which is very close to Washington, D.C., hence why we're

1 bringing a lot of witnesses in from the Washington, D.C. area.

2 Because the board was here in Nebraska and because the
3 communications came to Nebraska, this is why he's being
4 prosecuted here in Nebraska. Is there anybody among you who
5 thinks it's unfair to bring an individual from Maryland into
6 another jurisdiction in the United States, which is the
7 federal jurisdiction here in Nebraska, and try him for a
8 criminal offense? All right.

9 I'm going to ask you a couple of more computer-related
10 questions. The Court has already covered many of these. I'm
11 going to try to avoid them as much as possible.

12 But PedoBook is set up very similar to Facebook. And I'm
13 curious as to -- and as time goes by, and the more you do
14 this, you learn to ask the question the opposite way of what
15 you maybe did a couple years ago, especially when it comes to
16 computers.

17 So rather than asking has anybody here heard of Facebook,
18 I'm going to just ask is there anybody here who hasn't heard
19 of Facebook? All right. That's what I thought.

20 Is there anybody here -- and to be honest, I'd raise my
21 hand to this -- who doesn't belong to Facebook or is not on
22 Facebook?

23 All right. Quite a few people. I don't need to go into
24 specifics as to that.

25 But, generally those of you who are on Facebook, I want

1 to address this question to you now. Those of you who are on
2 Facebook, how many of you participate in polls while you're on
3 Facebook? Mr. Reiff and...

4 PROSPECTIVE JUROR HELMS: No, just scratching.

5 MR. NORRIS: Okay. How many of you engage in private
6 messaging between other friends on Facebook? Again, I'm not
7 going to get into specifics on that, I'm just curious as to
8 the number.

9 How many of you -- and this is not Facebook-related, this
10 is just with regard to questions -- are familiar with certain
11 -- I call them evidence-erasing type matters, but they're
12 actually file-erasing type matters, little operations such as
13 CCleaner or Eraser? Mr. Pugh, Mr. Reiff. Generally some
14 people are familiar with that. Anybody else ever heard of
15 those?

16 PROSPECTIVE JUROR BOLDT: Uh-huh.

17 MR. NORRIS: Obviously, again with your IT
18 experiences.

19 All right. I want to talk a little bit just in general
20 about child pornography. And nobody's asking you whether you
21 condone child pornography. And the Court did a very nice
22 explanation with regard to, you know, it's not a question of
23 whether it's illegal because Congress has already said it's
24 illegal. It's an issue of the nature itself.

25 Is there anybody here who thinks that -- or takes issue

1 with the fact that Congress has said that child pornography is
2 against the law? That's the basic question I'm getting at.
3 Is there anybody here who thinks, well, you know what,
4 Congress should not get into that area, or Congress should not
5 pass any laws as it relates to sexual exploitation of children
6 or child pornography? All right. Thank you.

7 Is there anybody here who thinks that child pornography
8 is protected by the First Amendment? Anybody? All right.

9 The First Amendment does not protect child pornography.
10 If you believe that it did, is there anybody here who would
11 not be able to apply the law as it's given to them, whether it
12 relates to talking about First Amendment rights or any other
13 issue as the Court gives them and substitute their own idea of
14 what the law should be?

15 That was a really awkward question, but they come out of
16 my mouth sometimes. No? Nobody? All right.

17 That gets me into a different area. I grew up watching
18 Perry Mason, LA Law, Ally McBeal. I can pretty much trace it
19 through the decades, the TV shows that people watch that are
20 law related; big fan of Law and Order through the years.

21 But, in watching those as a lawyer, you start realizing
22 that people start talking about different presumptions of
23 doubt, presumptions of innocence, reasonable doubt. And
24 that's all fine and dandy, but there's only one that matters
25 and that's going to be the one the Court gives you.

1 If you get an instruction about reasonable doubt or the
2 presumption of innocence, is there anybody here who is going
3 to say, well, Perry Mason used to always say this, and this is
4 the right standard for me; or on LA Law, this is the way it
5 was done, and that's the one that we're going to go with here?

6 Is there anybody who can't put that aside, whatever
7 preconceived notions they have, and apply the law as given to
8 them by the Court?

9 Your Honor, I notice my time is up. I will pass this
10 jury for cause.

11 THE COURT: Very good. Thank you, Mr. Norris.

12 We will now have voir dire by counsel for the defense,
13 Mr. Berry.

14 MR. BERRY: Good morning. My name is John Berry.
15 Actually I work at -- the name of the firm is Berry Law Firm.
16 Problem with technology is about 11 years ago, it was entered
17 in the court system as Berry Kelley so it always shows up if
18 you pull -- if I file a document online, it says Berry Kelley.
19 But the name of the firm is Berry Law Firm, and I just wanted
20 to make sure that we don't represent any of you or haven't in
21 the past.

22 So I'll ask that question. Berry Law Firm, have we
23 represented you or represented you in the past?

24 This is a voir dire, French, to tell the truth. We get
25 to talk back -- this is the only time that we get to talk back

1 and forth, and we have a very limited time to do it.

2 I've been in your position before. I sat two days on a
3 murder trial jury selection, was not selected because I knew
4 all the prosecutors, I knew the defense attorneys, and yet
5 they still kept me in there for two days. This won't be as
6 long or as painful, but I was hesitant to ask questions.

7 I know sometimes when those questions are thrown out
8 there, you are hesitant to respond. And so, I am going to
9 move very quickly, but I would ask that you raise your hand.
10 If in doubt, raise your hand and we'll talk about it.

11 Who here has been in a chat room? So we still have --
12 I'll go to Mr. Pugh. In that chat room, did you talk to other
13 individuals?

14 PROSPECTIVE JUROR PUGH: Yes.

15 MR. BERRY: Were there some of those individuals that
16 you didn't know their identity?

17 PROSPECTIVE JUROR PUGH: Yes.

18 MR. BERRY: Do you use your name or did you use an
19 alias?

20 PROSPECTIVE JUROR PUGH: Both.

21 MR. BERRY: Both?

22 What about you, Ms. Ladd?

23 PROSPECTIVE JUROR LADD: Pretty much the same answer.

24 MR. BERRY: I'm sorry, Mr. Furcini, same as well?

25 PROSPECTIVE JUROR FURCINI: Same.

1 MR. BERRY: Has anybody here ever had their e-mail
2 hacked? A few hands.

3 Ms. Ladd -- I'm sorry, I'll go back to Ms. Svehla.

4 PROSPECTIVE JUROR SVEHLA: I don't know for sure. I
5 did have false e-mails delivered to our e-mail address, you
6 know, some scams and so forth.

7 MR. BERRY: And what about you, Ms. Ladd?

8 PROSPECTIVE JUROR LADD: Yes, I had to change my
9 password and that was pretty much the end of it.

10 MR. BERRY: Were people getting spam or messages --

11 PROSPECTIVE JUROR LADD: Spam from me, yes.

12 MR. BERRY: And I'm sorry, who else, Mr. -- did I see
13 Mr. -- is it Matthews-Saunders; is that correct?

14 PROSPECTIVE JUROR MATTHEWS-SAUNDERS: Yes.

15 MR. BERRY: You've had that experience as well?

16 PROSPECTIVE JUROR MATTHEWS-SAUNDERS: Similar; having
17 to change the password. There's a lot of spam e-mails sent
18 out from my account.

19 MR. BERRY: Anyone on the other side of the room? I
20 didn't see any hands.

21 Now, Mr. Pugh, have you ever heard of fantasy chat,
22 fantasy chat rooms?

23 PROSPECTIVE JUROR PUGH: No.

24 MR. BERRY: Let me give you an example. Years ago I
25 had a case where there was a vampire/werewolves chat room and

1 people would go in there and they would take on these
2 identities as werewolves or vampires and they would chat back
3 and forth. Have you heard about that in the tech world?

4 PROSPECTIVE JUROR PUGH: No.

5 MR. BERRY: Has anybody heard of that? Ms. Ladd?

6 PROSPECTIVE JUROR LADD: Just RP stuff.

7 MR. BERRY: What's RP?

8 PROSPECTIVE JUROR LADD: Sorry, role-playing.

9 MR. BERRY: Role playing. What is role-playing?

10 PROSPECTIVE JUROR LADD: Like in World of Warcraft,
11 you pretend to be an elf so you say elfish things in a pretend
12 fantasy world.

13 MR. BERRY: And when you say "say elfish things," are
14 other people responding back --

15 PROSPECTIVE JUROR LADD: Yes. Other --

16 MR. BERRY: -- then they --

17 THE COURT: Stop, stop, stop. We have two people
18 talking at once. We can't make a record. So wait until the
19 question is finished, then begin the response. And vice
20 versa, Mr. Berry.

21 MR. BERRY: And do other people respond in character
22 as well?

23 PROSPECTIVE JUROR LADD: Yes.

24 MR. BERRY: Now that we've talked about that, is
25 anybody else aware of that type of role-playing online?

1 Yes, ma'am. And you are Ms. Hardesty?

2 PROSPECTIVE JUROR HARDESTY: Well, like in Big Bang
3 Theory, is that what you're talking about? Is that what --
4 I've seen it through Big Bang Theory.

5 MR. BERRY: And those are like Star Trek people?

6 PROSPECTIVE JUROR HARDESTY: Yes.

7 MR. BERRY: I'm not familiar with the show. You
8 understand that on TV they role-play on the computer?

9 PROSPECTIVE JUROR HARDESTY: Uh-huh.

10 MR. BERRY: And Ms. Ladd, how do you know who is on
11 the other end of the computer when you --

12 PROSPECTIVE JUROR LADD: It could be anybody --
13 sorry. It could be anybody.

14 MR. BERRY: Do they generally stay with their names,
15 their chat names, if you will?

16 PROSPECTIVE JUROR LADD: They either use a character
17 name or a first name. Sometimes after awhile, they may use a
18 longer name or more about them as you get to know them.

19 MR. BERRY: Is anyone here familiar with The Onion
20 Router or Tor?

21 Ms. Ladd and Mr. -- Mr. Ladd -- Ms. Ladd and Mr. Pugh.
22 You've both heard of that? What's your understanding of what
23 that is?

24 PROSPECTIVE JUROR PUGH: It's to access files.

25 MR. BERRY: Ms. Ladd, would you agree with that?

1 PROSPECTIVE JUROR LADD: Yes.

2 MR. BERRY: Mr. Pugh, do you think -- your
3 understanding of Tor is it allows people to search the
4 Internet anonymously?

5 PROSPECTIVE JUROR PUGH: Yeah, to get stuff or --

6 MR. BERRY: Has anybody here heard of Silk Road? A
7 few hands.

8 Mr. -- is it Lausterer?

9 PROSPECTIVE JUROR LAUSTERER: Yes.

10 MR. BERRY: What have you heard about it?

11 PROSPECTIVE JUROR LAUSTERER: Mainly that it's for
12 illegal gotten gains, drugs or anything basically that you
13 couldn't find legally online. Someone ran that website I
14 think back -- out west. He was arrested, but I think it's --
15 it's continuing to be taken over by somebody else.

16 MR. BERRY: Would you agree with that, Mr. Pugh? Or
17 do you have a different view on that.

18 PROSPECTIVE JUROR PUGH: No, that sounds right.

19 MR. BERRY: Has anyone ever posted anything online
20 anonymously? Mr. Pugh, Ms. Ladd. You don't have to give us
21 the specifics, but generally what was it about?

22 PROSPECTIVE JUROR LADD: Just comments on blogs
23 usually.

24 MR. BERRY: Commenting on what somebody else said?

25 PROSPECTIVE JUROR LADD: Yes, in response, or my

1 personal opinion.

2 MR. BERRY: Has anyone ever commented on a news story
3 here, on a blog, or response to, say, something on Omaha
4 World-Herald.com?

5 Mr. Pugh, you indicated you're familiar with the CCleaner
6 and Eraser?

7 PROSPECTIVE JUROR PUGH: Uh-huh.

8 MR. BERRY: What are those?

9 PROSPECTIVE JUROR PUGH: Disk drive erasers.

10 MR. BERRY: What is your understanding of the
11 purpose?

12 PROSPECTIVE JUROR PUGH: To make sure there's no data
13 left on a drive.

14 MR. BERRY: It's your understanding they're basically
15 used to clean hard drives?

16 PROSPECTIVE JUROR PUGH: Uh-huh.

17 MR. BERRY: I'm sorry, is that a yes?

18 PROSPECTIVE JUROR PUGH: Yes.

19 MR. BERRY: Now, Mr. Norris briefly brought up the
20 First Amendment. And he explained there's no First Amendment
21 right to child pornography. However, there is a First
22 Amendment right to free speech, and there is a right to
23 assemble.

24 We've talked a little bit about child pornography in this
25 case. I suspect that there may be some evidence in this case

1 about individuals getting online in a forum, such as PedoBook,
2 to chat about child pornography and sexual fantasies.

3 Now, speech about those things is not necessarily
4 illegal. However, is there anyone here that feels that they
5 would not be able to presume someone innocent if they engaged
6 in that type of speech?

7 Ms. Ladd?

8 PROSPECTIVE JUROR LADD: I might be leaning more
9 towards they are guilty.

10 MR. BERRY: And why is that?

11 PROSPECTIVE JUROR LADD: Because it is coming from
12 their imagination, you have to at least thought about it
13 before. Even if it hasn't occurred, it's still something in
14 your mind, which is pretty much the first step towards doing
15 something.

16 MR. BERRY: So even if the government establishes --
17 only establishes it's fantasy chat, would you still have
18 difficulty forcing them to prove their burden of proving the
19 case beyond a reasonable doubt that a defendant broke the law?

20 PROSPECTIVE JUROR LADD: If he actually used the
21 website, then, yes, I would have trouble with that.

22 MR. BERRY: Okay. And when you say "actually used
23 the website," once again there may be issues about
24 conversations. But if it's not about the specific charges in
25 this case, such as child pornography, then can you still

1 presume that person innocent unless or until the government
2 proves the case beyond a reasonable doubt?

3 PROSPECTIVE JUROR LADD: Yes.

4 MR. BERRY: Does anyone have some of the similar
5 concerns that Ms. Ladd has?

6 Mr. Pugh?

7 PROSPECTIVE JUROR PUGH: I've been on a lot of blogs,
8 and I know that people are constantly linking to other stuff.
9 And as soon as you start blogging, it's almost inevitable that
10 you would venture off to other areas outside of that blog very
11 quickly. And if you're talking about those things, those
12 things are probably coming up, too.

13 MR. BERRY: So you have some life experience that you
14 bring to this, correct?

15 PROSPECTIVE JUROR PUGH: Yeah, I'm on blogs and I
16 know people are constantly posting an image if you're talking
17 about something.

18 MR. BERRY: But if there is no evidence that the
19 defendant posted an image or downloaded an image, can you
20 still hold the government to its burden of proving the case
21 beyond a reasonable doubt?

22 PROSPECTIVE JUROR PUGH: Depends on if there's
23 evidence of things being tampered with, things where he would
24 leave virtual trails.

25 MR. BERRY: Who here drove on the interstate this

1 morning? Ms. Johanek, do you drive on the interstate
2 frequently?

3 PROSPECTIVE JUROR JOHANEK: No.

4 MR. BERRY: Today you did.

5 PROSPECTIVE JUROR JOHANEK: Yes, I did.

6 MR. BERRY: Have you ever driven down the interstate
7 and seen someone pulled over and the lights are flashing?

8 PROSPECTIVE JUROR JOHANEK: Yes.

9 MR. BERRY: You get close, and what's the first thing
10 that pops in your mind?

11 PROSPECTIVE JUROR JOHANEK: What did they do wrong?

12 MR. BERRY: What did they do wrong? What about you,
13 Ms. Demers? Do you drive?

14 PROSPECTIVE JUROR DEMERS: Yeah.

15 MR. BERRY: What do you think when you see that
16 person pulled over on the side of the road and the lights
17 flashing?

18 PROSPECTIVE JUROR DEMERS: Busted.

19 MR. BERRY: Busted.

20 What do you think, Mr. Boldt? Let's change the facts
21 here a little bit so that now there's a drug dog sniffing a
22 car outside. What pops in your mind?

23 PROSPECTIVE JUROR BOLDT: They've probably got drugs.

24 PROSPECTIVE JUROR MONSON: What kind of drugs?

25 MR. BERRY: I'm sorry, that's Ms. Helms -- no,

1 Ms. Monson.

2 So we generally presume guilt. Would you agree with
3 that, Ms. Johaneck?

4 PROSPECTIVE JUROR JOHANEK: Yes.

5 MR. BERRY: And the judge is going to instruct you in
6 this case that you must presume Mr. DeFoggi innocent.

7 PROSPECTIVE JUROR JOHANEK: Yes.

8 MR. BERRY: Do you think you will be able to do that
9 in this case, knowing this is a case about child pornography?

10 PROSPECTIVE JUROR JOHANEK: If it's presented to me
11 the way it needs to be, yes.

12 MR. BERRY: And Ms. Demers, even though we don't say,
13 "Why did they stop that innocent man" --

14 PROSPECTIVE JUROR DEMERS: Yes, I mean -- I'm
15 nervous.

16 MR. BERRY: I understand. And that's okay.

17 But, you could presume Mr. DeFoggi innocent even though
18 when we see that car, that police car, and the police are
19 involved, we think what did they do wrong? You think you can
20 overcome that?

21 PROSPECTIVE JUROR DEMERS: Oh, yeah.

22 MR. BERRY: Would you agree, Mr. Boldt, that we've
23 been taught where there is smoke, there is fire; and we tend
24 to presume things like guilt naturally, correct?

25 PROSPECTIVE JUROR BOLDT: Yes.

1 MR. BERRY: But do you think you can overcome that
2 natural presumption in this courtroom and to be able to apply
3 a different standard, which is to presume a man innocent who
4 has been arrested?

5 PROSPECTIVE JUROR BOLDT: Yes, I do.

6 MR. BERRY: Does anyone think they can't presume
7 Mr. DeFoggi innocent?

8 Okay. Ms. Cramer? Why is that?

9 PROSPECTIVE JUROR CRAMER: Just because child
10 pornography is so despicable that I think it would just be
11 hard to -- you'd have to really prove it to me that he was
12 innocent.

13 MR. BERRY: Okay. And that brings me to my next
14 point. The burden is on the government to prove the case
15 beyond a reasonable doubt. Mr. DeFoggi has no burden. He
16 does not have to testify.

17 That being said, if Mr. DeFoggi does not testify and the
18 government does not meet its burden, can you still find
19 Mr. DeFoggi not guilty?

20 PROSPECTIVE JUROR CRAMER: I believe I could, but I
21 think it would be difficult.

22 MR. BERRY: Your Honor, I see I'm out of time, but
23 I'd like to continue to inquire.

24 THE COURT: If you wish to move to have this witness
25 removed and have --

1 MR. BERRY: I will --

2 THE COURT: -- have this juror removed and replace
3 her, I will grant that request.

4 MR. BERRY: I will make that motion.

5 THE COURT: Ms. Cramer, will you please take a seat
6 behind the front bench?

7 And Ms. Gomez, will you please give me another name?

8 COURTROOM DEPUTY: Carlene J. Byers.

9 THE COURT: Ms. Byers, you've been here in the
10 courtroom throughout the voir dire process, have you not?

11 PROSPECTIVE JUROR BYERS: Yes.

12 THE COURT: Did you have some affirmative answers to
13 any of these questions?

14 PROSPECTIVE JUROR BYERS: No.

15 THE COURT: All right. You may take another couple
16 of minutes, Mr. Berry.

17 MR. BERRY: Ms. Byers, are you a legal analyst; is
18 that right?

19 PROSPECTIVE JUROR BYERS: I am.

20 MR. BERRY: What's that?

21 PROSPECTIVE JUROR BYERS: I read contracts all day.

22 MR. BERRY: Okay. Sounds fun.

23 PROSPECTIVE JUROR BYERS: Yeah.

24 MR. BERRY: You've heard the questions I've asked.
25 Do you have any concerns -- and let me restate this.

1 Do you think it's fair that the government bears the
2 burden of proving the case beyond a reasonable doubt?

3 PROSPECTIVE JUROR BYERS: Yes.

4 MR. BERRY: Do you think you can uphold that
5 standard?

6 PROSPECTIVE JUROR BYERS: Yes.

7 MR. BERRY: And if you hear some disturbing speech
8 about children or child pornography but the government does
9 not prove every element of the offense, can you still -- or
10 will you find Mr. DeFoggi not guilty?

11 PROSPECTIVE JUROR BYERS: I could.

12 MR. BERRY: Thank you.

13 No further questions. I pass the panel for cause.

14 THE COURT: Very good.

15 At this juncture, Ms. Gomez is going to be working with
16 the lawyers to help them as they exercise their peremptory
17 challenges to reduce the number of jurors to the number that
18 we actually need for the trial in this case.

19 And perhaps either Ms. Griess or Ms. Gomez may open that
20 door back to the jury deliberation room in case anyone needs
21 to go through there to use a restroom. The restrooms are on
22 the left through that door. I just ask if you do need to use
23 the restroom and you go back there, please don't talk to
24 anybody as you come to and from.

25 If you do leave the room, you will be missing a very

1 interesting presentation. Usually this is a quiet time in the
2 trial while the lawyers do their work with the courtroom
3 deputies.

4 But because we want this to be an educational experience
5 for all of you, including those of you who are not ultimately
6 selected to serve on the jury, Ms. Fauber has agreed to give a
7 special presentation today called Everything You Wanted to
8 Know About Court Reporting But Were Afraid to Ask.

9 Now for her to do this, I have to be quiet; I have to
10 stop talking. So without further ado, I give you Ms. Fauber.

11 (Presentation given.)

12 (Peremptory challenges exercised.)

13 THE COURT: Ms. Gomez is now going to read the names
14 of the members of the jury panel who will not be serving on
15 this jury. Don't get up and leave right away; please wait and
16 I'll excuse you as a group, along with the jurors seated
17 behind the front bench.

18 Ms. Gomez?

19 COURTROOM DEPUTY: Diane Svehla, Jared Boldt, George
20 Brown, Kari E. Ladd, Tiffany Monson, Calvin J.
21 Matthews-Saunders, Marcia J. Beck, Lisa A. Hardesty, Lawrence
22 P. Scanlan, David O. Sperling, Kevin Milton Hansen, Jason W.
23 Reiff, Randy J. Bradley, Stacy A. K. Furcini, Monique D.
24 Forman, Daniel J. Ellenberger, David M. Capoun, Craig DeMayo,
25 Greg C. Pugh, Tasha M. Helms. That's it, Judge.

1 THE COURT: Very good. Those of you whose names have
2 been read and those of you who are seated behind the front
3 bench are now excused.

4 And Ms. Gomez, do they need to call in after three
5 o'clock on Friday for further instructions?

6 COURTROOM DEPUTY: Yes, ma'am.

7 THE COURT: Please call the clerk's office on Friday
8 after three o'clock for further instruction. And on behalf of
9 the court, thank you very much for your time and attention
10 this morning.

11 (Unselected jurors leave.)

12 THE COURT: Ms. Gomez, if you would please seat the
13 jurors.

14 (Off-the-record discussion had.)

15 THE COURT: Now that we have you all seated, if you
16 would please stand and raise your hand, we have one more oath
17 for you.

18 (Jury sworn.)
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